

TRANSCRIPT OF PROCEEDINGS

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PLANNING & ENVIRONMENT COURT P & E No 32 of 1993

JUDGE NEWTON

DAVID WYNNLEIGH GRIFFITHS Appellant

and

ALBERT SHIRE COUNCIL Respondent

SOUTHPORT

..DATE 06/10/94

..JUDGMENT

HIS HONOUR: In this matter I have ordered that the
appeal should be dismissed. I publish my reasons.

...

HIS HONOUR: With respect to the question of costs, I
adjourn the hearing to a date to be fixed.

IN THE PLANNING & ENVIRONMENT COURT

P & E 32/93

HELD AT SOUTHPORT

QUEENSLAND

Before Newton, D.C.J.

[RE: DAVID WYNNLEIGH GRIFFITHS - V - COUNCIL OF THE SHIRE
OF ALBERT]

BETWEEN:

DAVID WYNNLEIGH GRIFFITHS

Appellant

- and -

COUNCIL OF THE SHIRE OF ALBERT

Respondent

REASONS FOR JUDGMENT

Judgment delivered: 6 October, 1994.

Catchwords:

Application for rezoning of land from Rural A to Special Residential - Whether proposal complies with clauses 4.8.1 and 4.8.2 of Draft Development Control Plan No. 5 - Whether additional traffic movements created by proposal would significantly affect amenity of existing residents - Whether precedent would be established in respect of adjoining property owners.

Counsel: Mr W Cochrane for Appellant

Mr S Ure for Respondent

Solicitors: Bell, Rapp & Partners for Appellant

King & Co for Respondent

Hearing Date(s): 14 & 15 September. 1994.

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REASONS FOR JUDGMENT - NEWTON, D.C.J.

(Delivered the 6th day of October, 1994)

This appeal concerns an application for rezoning of land at Gaven from Rural A to Special Residential. The site, the subject of the appeal, is located at the top end of High Ridge Road, Gaven. The site is high land from which views of the ocean to the east are available. The land to the north and west is being developed as the Pacific Pines Estate. The site has an area of 3.08 hectares. It forms the top piece of land at the bulb of a cul-de-sac, which is High Ridge Road. The site is immediately surrounded by park zone land.

The purpose of the intended rezoning is to accommodate forty-eight residential units to be built on the site. The application for rezoning was made to the Council of the Shire of Albert on 16 June, 1992. The respondent Shire Council requested more detailed plans of the proposed layout of the residential units and this information was provided in October, 1992. The architectural plans submitted to the Council show that the proposed construction on the site involves forty-eight units, most in a duplex formation. The units are either of three or two bedroom configuration. Some units would be free standing. The proposal is for the construction of twenty-eight two bedroom units and twenty three bedroom units. A site coverage of 14% and a minimum landscaped area of 70% of the subject site are proposed. This is well within the limits allowed under the town planning scheme.

The subject site is presently rather densely planted with pine trees and other shrubs and trees. It is proposed by the applicant to clear the vegetation in such a way as to provide a buffer around the site. A bulldozed road through the site, which was constructed without the applicant's permission or knowledge some seven or eight years ago, is to be replanted.

One objection to the application for rezoning was received by the respondent Council on 10 July, 1992 from Mr and Mrs Morgan. They have since moved from High Ridge Road.

The Town Planning Scheme for the Shire of Albert was gazetted on 19 March, 1988. Under that scheme the subject

site is zoned Rural A. This zone is described within the planning scheme for the intent of zones as being intended to implement the objectives of the rural residential areas on the Strategic Plan and to provide areas wherein dwelling houses can be erected on small rural allotments. The intended zoning for the subject site is Special Residential, which is described as intending to cater for specific residential developments for which a plan of development is approved. Development of a site within a special residential zone is required to be consistent with the plan of development approved for such specific residential development.

Under the Strategic Plan, the designation of preferred dominant land use is Urban Residential. The Town Planning Scheme describes this designation as including existing and future areas of urban housing and it is intended that such housing will be mainly detached on 600 square metres to 1,000 square metres lots but with limited areas of higher density. Thus, simple mathematics demonstrates that the average sized lot per unit, should this development proceed, would be 641 square metres.

The Strategic Plan also defines rural residential zone as being intended to accommodate people who wish to live on larger allotments than are found in urban areas but who nevertheless desire a reasonable standard of accessibility and services.

The Town Planning Scheme declares with regard to the urban residential area in Objective I(1) that the objectives and criteria for implementation within that preferred dominant land use designation are "to allow alternative housing opportunities in appropriate locations at the same time ensuring appropriate standards of development are attained throughout". With regard to implementation, the Town Planning Scheme indicates that housing schemes are intended to be subdivided pursuant to the provisions of the Building Units and Group Titles Act to be encouraged to take advantage of greater flexibility in design standards to create particularly attractive environments or otherwise provide a superior form of

development than would be likely to be achieved through conventional subdivision.

The issues in the appeal before me are that the application is contrary to Clauses 4.8.1 and 4.8.2 of the Draft Development Control Plan No. 5; that the additional traffic movements to be created as a consequence of the proposed development having access to High Ridge Road will have a detrimental effect on the existing rural residential type amenity of the other residents and that it will create an undesirable precedent for other property owners on High Ridge Road.

The application for rezoning was considered by the professional officers of the respondent Council and a report was tabled at a Planning and Development Services Committee meeting on 2 December, 1992. The Planning Officer commented that "the development will increase traffic by approximately 300 vehicle movements per day" and makes the comment that "it is well buffered and screened from the surrounding rural residential properties". He further commented that High Ridge Road is a cul-de-sac, but is wide enough to sustain the additional traffic generated by the proposed zoning. He also pointed out that the special residential development of the density proposed is consistent with the Strategic Plan objectives and that the site is well suited for a Group Title Cluster development, it being buffered on two sides by public open space and being well vegetated with mature pine trees and having extensive views.

Despite the recommendation of the Town Planning Officer to support the application, the Council's Planning and Development Services Committee voted on 2 December, 1992 to defer consideration for investigation of a modified concept plan involving vehicle access from the Pacific City or Pacific Pines development.

On 8 December, 1992 the Council deferred making a decision on the application and again referred the matter back to the Planning and Development Services Committee.

On 16 December, 1992 the Planning and Development Services Committee decided to further defer the

application to enable further information with respect to access from the Pacific City development to be obtained. Thereafter, there were discussions between the Council and the applicant, Mr Griffiths, and on 22 March, 1993 Mr Griffiths wrote to the Council seeking consideration by it of the deferred application. In his letter of that date, Mr Griffiths indicates that he had approached the developers of the Pacific Pines development, Stockland Industries, but was unable to obtain agreement to gain access to the subject site via their development. Further negotiations between Mr Griffiths and the Council continued and on 4 May, 1993 Mr Griffiths, by letter, requested the Council to reconsider his application on the basis of a reduction in the number of units from forty-eight to thirty-two.

Mr Griffiths' request involving the reduction in density of the development was considered by the Planning and Development Services Committee on 27 May, 1993. The minutes of that meeting show that the Town Planner, Mr Glew, said "separate discussions were subsequently held with Stockland, the Pacific City developer, and representatives of Council's Planning and Development Committee, to resolve the matter. It now appears that the only feasible access to the site is from High Ridge Road and the applicant is now requesting that Council reconsider the rezoning application on the basis of a reduced density with vehicular access on to High Ridge Road". Mr Glew notes that the proposed zoning is consistent with the urban residential designation in the Strategic Plan and he supported the application for the amended development as "having been appropriately designed in Group Title Clusters to minimise site coverage and the impact on the surrounding locality".

Despite Mr Glew's recommendation, the Planning and Development Services Committee decided not to approve the application. Council considered the decision of the Planning and Development Services Committee and adopted the decision of the committee. A letter was sent to Mr Griffiths on 3 June, 1993 informing him of the refusal by Council of his application. An appeal was filed on 6 July, 1993. On 20 December, 1993 the appellant wrote to

the respondent Council asking for further consideration of his application on the basis of developing forty-eight units. This request was made after the appellant had received advice from surveyors and consultant engineers that alternative access to the site may be possible.

The respondent Council obtained a report from Eppell Consulting, over the signature of Mr Olsen, a Traffic Engineer. That report is dated 12 July, 1994. In that report, Mr Olsen comments that while the existing allotments on High Ridge Road are large, many of the houses have been constructed close to the road frontage to take advantage of the views to the coast. Accordingly, Mr Olsen commented that the existing development in High Ridge Road does not have the appearance of more typically expansive park residential areas. Mr Olsen acknowledged that the proximity of the houses to the roadway may raise sensitivity to traffic movements but he was of the view that the level of objection did not indicate general concern. Mr Olsen identified High Ridge Road as being an access street under AMCORD which provides for environment capacity consistent with direct property access of 1,000 vehicles per day for a 5.5 metre carriageway and for 2,000 vehicles per day for a 6.5 metre carriageway. High Ridge Road is approximately 5.8 metres wide. Mr Olsen accepted that the proposed development would result in a noticeably increased volume of traffic, particularly at the northern end of High Ridge Road. However, he was of the view that whilst this may be undesirable, there were no grounds for arguing that such use of High Ridge Road was unacceptable. He also expressed the view that it was not reasonable to pursue conditions requiring alternative access.

On 2 September, 1994 the appellant received from the respondent a letter identifying the issues upon which the hearing of this appeal were to be argued. A request for further and better particulars was sent to the respondent Council on 6 September and in response to that request further and better particulars were provided on 8 September.

Two Town Planning Consultants, Mr Vann and Mr Brewster, gave evidence and their respective reports were tendered. Mr Vann supported the appellant's case and Mr Brewster that of the respondent.

In the Draft Strategic Planning Scheme, the subject site is located in the middle of urban residential land. However, the Strategic Plan by reference to the Draft Albert Corridor Development Control Plan, indicates that the subject site is within park residential area. The Draft DCP5 (Exhibit 9) supplements the Strategic Plan through the provision of more detailed design and development guidelines. With respect to developing the Albert corridor, it states the intention of achieving "a high quality rich and diverse, but harmonious urban form". The Development Control Plan, when describing the nature of the park residential preferred dominant land use, describes this as being "intended to accommodate both the existing park residential areas as well as not precluding a very limited number of further rezonings to the park residential zone for development of this nature." Paragraph 4.8.2 of the Development Control Plan states "that council may consider development and/or rezoning applications over areas which are designated as park residential for proposals of a high density residential nature." A number of criteria are then set out, compliance with which is required before a proposal of this nature may be approved. The criteria are as follows:-

- 1) The proposed area is at least one hectare in size;
- 2) Such a site is located close to an established urban residential area, town centre or neighbourhood centre;
- 3) Such a site represents a logical extension of the DCP's residential areas and/or would strengthen a town or neighbourhood centres' catchment population;
- 4) Such a proposal would not, in Council's opinion, unduly compromise the amenity and integrity of the adjacent park residential areas;

- 5) There is adequate physical, visual and acoustic buffering between the proposed residential development and the existing park residential area;
- 6) By virtue of parcel size, shape or configuration, such a proposal does not represent an ad hoc scheme which compromises or cannot form part of the logical development or redevelopment of the locality;
- 7) Adequate service infrastructure can be provided.

I was informed by counsel for the appellant that his client believed that the access off any other point than High Ridge Road was impractical or unachievable for this development. Thus the appellant was not interested in seeking options in terms of the decision about the rezoning of the subject site. The case to be argued was purely on the basis of forty-eight lots and access off High Ridge Road.

From the respondent's point of view, the issues in the hearing before me were said to be that the proposal is in conflict with the forward planning documents of the Council of the Shire of Albert, that the impact on the park residential area rural residential amenity that the people in High Ridge Road currently enjoy would be of an unacceptable level and, thirdly, to a lesser extent, the undesirable precedent that would be created if this development were to proceed. In the event this last issue was but gently pressed because of the smaller size of the other lots in High Ridge Road (all of them being less than 1 hectare) and I am satisfied that this issue should be decided in favour of the appellant.

Mr Vann, the Town Planning Consultant, called by the appellant, testified that he regarded the subject site as being at the interface of residential development and park residential development. On the western and northern sides are substantial urban developments (Pacific Pines Estate and Studio Village) and to the south and east is the Gaven Forrest Estate. The site's particular topography and circumstances are such that it lends

itself to sensitive development of an urban nature. The size of the subject site (3.08 hectares) and its physical separation from other park residential allotments in High Ridge Road by parkland areas distinguish these site from all of the other allotments in High Ridge Road. Mr Vann testified that both the current and the proposed strategic plans envisage urban residential development within the park residential designation. The Draft DCP provides at paragraph 4.8.2, criteria to be considered in assessing such proposals. Mr Vann was of the view that if it had been intended by council that no such urban development should be contemplated then the site would have been removed from the urban residential designation in the current Strategic Plan and placed in the Park Residential designation in the Draft Strategic Plan. Mr Vann concluded that the proposal satisfied the criteria in paragraph 4.8.2 of the Draft Control Plan, and that the proposal was consistent with both the existing and proposed plan framework. With respect to the creating of an undesirable precedent and the likelihood of development of lots down the road from the subject site, Mr Vann was of the view that these lots do not enjoy the circumstances of the subject site which was well vegetated and physically buffered from surrounding rural residential areas by areas of parkland. Furthermore, the housing in High Ridge Road was seen to be of generally a good quality and it would be unusual, said Mr Vann, for housing of that quality to be sacrificed for development.

With respect to the impact of increased traffic on High Ridge Road, Mr Vann said that it was preferable to look both at the percentage increase in traffic flow as well as the volume in the context of the existing road structure. However, Mr Vann said that percentages can be misleading if they are actually being compared with a very low base and that it was more appropriate to look at the volume of traffic in the context of the capacity of the road and the circumstances of the road.

In his report, Mr Vann stated that the capacity of High Ridge Road and Glade Drive, which leads into High Ridge Road, to adequately cater for the volume of traffic likely to be generated by the proposal is not in dispute.

The only issue in dispute is the potential for traffic generated by the proposal to have a detrimental effect on the amenity of the adjoining park residential area. Mr Vann stated that if the forty-eight units proposed generated, on average, about eight vehicle trips per day, approximately four hundred vehicle trips would be added to the road system via High Ridge Road. Mr Vann conceded that this would be discernible to residents of High Ridge Road but that such levels were still extremely small, consistent with those envisaged by AMCORD for the access street category which accords with the construction standard of High Ridge Road. In these circumstances, concluded Mr Vann, it is considered that whilst traffic volumes will increase and will be noticeable, this traffic is not such that it could be considered an undue detrimental effect on the amenity of the area.

Mr Vann did not, in his report, consider the gradient of High Ridge Road leading to the proposed point of access to the unit development. As will be mentioned later when dealing with the evidence of Mr Brewster the gradient is, in places, as much as 17%. The likelihood of increased traffic noise because of this gradient is a factor that in my view should have been more carefully considered by Mr Vann.

In his report, Mr Brewster, states that in his opinion the character of the proposed development is substantially different from the rural residential development to which it currently relates, namely, High Ridge Road. Mr Brewster acknowledges that because of the visual separation from Pacific Pines and the open character of the buffer areas, the main interaction between the existing and proposed development is not visual. However, Mr Brewster considers that in terms of the expected increase in traffic generated by the development it could be compared to a further street of forty-eight dwelling units joined to the head of High Ridge Road. Mr Brewster compared Rural A zone allotments in Mudgeeraba, Tallai and Bonogin with the proposal in High Ridge Road and discovered that the average number of allotments in cul-de-sac streets in those areas ranged from a minimum of five to a maximum of thirty-one. This

contrasts sharply with the proposal which would increase the total equivalent allotments or dwellings to seventy-one. This would effectively double the maximum in the sample of the suburbs surveyed.

Mr Brewster observes that the subject site is designated as Urban Residential on both the 1988 and Draft Strategic Plans, however, he indicates that the Strategic Plan is a small scale map which does not accurately portray the rural residential existing development in the High Ridge Road locality prior to the 1988 Plan. He further notes that the subject site is also subject to the Draft Development Control Plan No.5 for the Albert corridor. Within this plan the site is included in the Park Residential Preferred Dominant Land Use designated area. Mr Brewster states that this plan is a larger scale capable of more detailed designation of small areas, including the subject site. It incorporates the current planning of the Pacific Pines Estate and thus reflects a different scenario to the 1988 Strategic Plan. Because the Development Control Plan has been on public display, Mr Brewster considers that some weight should be given to it in assessing this application. I, too, am of that view.

With respect to the criteria set out in Section 4.8.2 of the Development Control Plan No.5, Mr Brewster, in his report stated as follows:- "Under these criteria, the site as presently connected to the Rural A (Park Residential) precinct;

- 1) does not represent a logical extension of the urban residential or type R1 or R2 areas;
- 2) is physically close to an establishing urban residential area but separated by urban space buffering and shown on DCP on map 2 as integrated with the park residential precinct;
- 3) does not strengthen the town or neighbourhood centres' immediate catchment population;
- 4) could compromise the amenity and integrity of the adjoining park residential areas;

- 5) does provide adequate physical, visual and acoustic buffering;
- 6) is an ad hoc scheme and only under certain circumstances of alternative access could form part of the logical development of the locality.

Mr Brewster, in his report, also considered a set of criteria used by the respondent Council for consideration of higher density proposals. These include:-

- 1) the likely impact of the development on the nearby environment;
- 2) the relationship of that development to development on adjoining land or on other land in the locality;
- 3) the amount of traffic likely to be generated by the development, particularly in relation to the capacity of the local road system and the probable effect of that traffic on the movement of traffic on that road system.

In Mr Brewster's view, the proposal is an isolated town house development taking advantage of a large park residential site. The proposal has no planning basis and is not a logical extension of an urban residential area. Mr Brewster identifies the key issue as the relationship between the proposal and the existing development. In this regard, the traffic impact on the rural residential amenity is seen as relevant.

The impact of the proposal on traffic problems was considered by Mr Brewster in his report in greater depth than was the case of the reports by Mr Vann and Mr Olsen. It seems to be common ground that the traffic volume generated by the existing twenty-three lots in High Ridge Road (excluding the subject lot) is estimated to be two hundred and thirty vehicles per day at ten per lot for residential usage. The proposal would generate something in the order of eight movements per day for each of the forty-eight units, which is the equivalent of three hundred and eighty-four vehicles per day. The effect of

the proposal is therefore to more than double the anticipated traffic volume to approximately six hundred and ten vehicles per day. Mr Brewster assessed High Ridge Road as an access place when considering the AMCORD standards for maximum traffic volume. I think he was incorrect in his assessment of High Ridge Road as an access place. It is more appropriately classified as an access street. However, that error does not affect the assessment of likely traffic volume generated by the proposal. Nor does the relevant AMCORD classification take into account the physical characteristics of the street in question. High Ridge Road, as was accurately described by Mr Brewster in his report, is a relatively straight road leading up to the subject site. It increases in gradient up to a 17% slope. Mr Brewster observes that this would encourage speed of vehicles leaving the development and increase noise levels of approaching vehicles. The imposition of three hundred and eighty movements per day is, in Mr Brewster's view, far more intrusive with reference to High Ridge Road, than would be the case on a flat road. I accept the correctness of that proposition.

I also accept the suggestion made by Mr Brewster that the impact on amenity should be compared with equivalent rural residential development anticipated by residents in purchasing lots in the street. In this regard, Mr Brewster in his report, correctly notes that some fourteen of the existing twenty-one houses have been constructed close to the road frontage, and within the range of setbacks typical of urban residential areas. No doubt in many cases the siting has been planned to take advantage of the available views to the coast. The siting of the houses in High Ridge Road would result in the impact of the expected increase in traffic volume to be exacerbated. I think it reasonable to assume, that in siting the existing houses, the residents would have had expected that traffic noise would be minimal from twenty-four lots.

Evidence was received from both the appellant, Mr Griffiths, and from five residents of High Ridge Road. Each expressed their views in relation to the proposed

development but none of the evidence of these witnesses is of great assistance in determining the issues of this case.

In my view, the criteria set out by paragraph 4.8.2 of the Development Control Plan, DCP5, for the Albert corridor with respect to the implementation of higher density areas within park residential areas should be given considerable weight. The proposed development does not comply with the criteria in the following respects:-

Firstly, the site, in my opinion, does not represent a logical extension of the DCP's residential areas, nor, does it strengthen the neighbourhood centre's catchment population. There is, in short, no connection between the subject site and the DCP's residential area. I accept the submission of counsel for the respondent that the proposed development on the subject site is, in effect, a contraction of the park residential precinct rather than an extension of the residential area.

Secondly, the proposed development would compromise the amenity of the adjacent park residential areas by an inappropriate increase in traffic volume. In this regard, I prefer the evidence of Mr Brewster to that of Mr Vann. To impose a further four hundred vehicle movements per day on the present level of traffic in High Ridge Road would be a serious and dramatic impact on the amenity of the park residential or rural residential area. I reject the evidence of Mr Vann that no substantive impact on the amenity of the area should be experienced.

Thirdly, the proposal, in my view, by virtue of its configuration, represents an ad hoc scheme which cannot form part of the logical development of the locality with its point of access being directly off High Ridge Road. In this regard, I accept that in referring to "the locality" the particular criterion must be taken to be referring to the Park Residential locality because it is within that context that all of the implementation provisions are to be considered.

For these reasons, in my view, the appeal should be dismissed.